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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

11 | COLLECTIVE DIGITAL STUDIO,  
12 | LLC, a California limited liability  
company,

13 Plaintiff,

14

15 | FREEPLAY MUSIC, LLC, a Delaware  
16 | limited liability company, and DOES 1  
| through 50, inclusive.

## 17 Defendants.

Case No.:

## COMPLAINT FOR:

**(1) DECLARATORY  
JUDGMENT [28 U.S.C § 2201]**

**(2) VIOLATION OF  
CALIFORNIA UNFAIR  
COMPETITION LAW (CAL.  
BUS. & PROF. CODE § 17200,  
*ET SEO.*)**

Plaintiff Collective Digital Studio, LLC (“CDS” or “Plaintiff”) alleges as follows:

## INTRODUCTION

25        1.      Defendant Freeplay Music, LLC (“Freeplay” or “Defendant” )  
26 chose its name in an effort to mislead the public that the music on its website is  
27 available for “free.” In fact, when a consumer enters a simple Google search for  
28 “free music,” Freeplay is one of the first websites to come up. Upon entering  
Freeplay’s homepage, the consumer is met with large text which prominently

1 states that Freeplay offers “FREE MUSIC FOR YOUTUBE AND MORE.” After  
2 luring in unsuspecting consumers with the promise of “free” music, Freeplay then  
3 encourages these consumers to use the music, including in their own YouTube  
4 videos. After the consumer follows Freeplay’s advice, Freeplay then traps the  
5 consumer by demanding that he or she pay outrageous “license fees” for the use of  
6 music that was supposedly “free.” Unlike most content owners, once a consumer  
7 uses Freeplay’s music in a fashion Freeplay deems to be “illegal,” Freeplay does  
8 not simply issue a takedown notice and request that the consumer remove the  
9 content. Instead, Freeplay sends the individual consumer a shakedown demand,  
10 threatening litigation if the consumer does not pay Freeplay an outrageous  
11 “license fee.” These shakedown demands are typically made by TuneSat, LLC –  
12 ostensibly a third party “monitoring” the web for supposed infringement on behalf  
13 of Freeplay. In fact, both TuneSat and Freeplay were founded by Scott Schreer,  
14 the current CEO of both. Both TuneSat and Freeplay coordinate with one another  
15 in this deceptive scheme perpetrated on content creators. Furthermore, in making  
16 these outrageous demands, Freeplay refuses to identify to the target of the  
17 shakedown all of the allegedly infringing content. This is NOT how a business  
18 that wishes to legitimately license and protect its content would behave. But  
19 Freeplay is not really in the content license business. Freeplay conducts its  
20 business in a very different manner – a “bait and switch” followed by extortion.  
21 By its conduct, Freeplay aptly fits the definition of the term “Copyright Troll.”

22 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

23 2. CDS is in the business of providing online media content to  
24 consumers. It does so, in part, through the operation of a Multi-Channel Network  
25 (“MCN”) on the media sharing website YouTube. Through its MCN, CDS  
26 provides multi-media content to users of YouTube. In addition to producing  
27 original content, CDS also partners with more than one hundred other YouTube  
28 channels operated by individual artists and content-creators – providing a greater

1 audience and branding opportunities for their creative output through its MCN.  
2 CDS provides these young and up-and-coming artists with an extraordinary  
3 platform to further their careers and broaden their appeal. The MCN model is so  
4 beneficial to these young artists precisely because they lack the financial resources  
5 to market their creative output on a mass scale. Collectively, CDS's MCN  
6 achieves more than one billion unique YouTube views per month.

7       3. Freeplay is also in the business of providing online media content to  
8 consumers. As its name inherently suggests, Freeplay markets itself as offering  
9 "free" music for download to consumers. The reality is far different. Freeplay is  
10 actually a for-profit enterprise. It entices unsuspecting members of the public to  
11 download its music, by claiming the use of such music is "free" – including,  
12 specifically, the use of such music on YouTube. After the consumer has  
13 downloaded the music and used it in virtually any manner, Freeplay contacts the  
14 consumer and demands a license fee for the allegedly unauthorized use of  
15 copyrighted material. Had Freeplay engaged in truthful advertising, and been  
16 upfront to the consumer regarding these "license fees," it is highly doubtful the  
17 consumer would have utilized this "free" music in the first place.

18       4. On information and belief, Freeplay's business model is structured  
19 upon this misleading "bait and switch" scenario. On information and belief,  
20 Freeplay generates a significant portion of its revenue through its aggressive  
21 license fee demands, coupled with threats of copyright infringement litigation.  
22 Individual consumers, caught completely unaware, are squeezed into paying  
23 Freeplay – typically for far more than Freeplay would have charged for a license  
24 in the first place. Consumers, including struggling artists and musicians, drawn to  
25 Freeplay by the promise of "free" music, generally lack the financial wherewithal  
26 to seriously challenge Freeplay's shakedown tactics.

27       5. Freeplay's deception of consumers is woven throughout its highly  
28 interactive website. Freeplay encourages consumers to download its "free" music

1 and use the music in their own YouTube videos. Freeplay even offers a tool on its  
2 website to assist consumers in the creation of new videos using Freeplay's music.  
3 However, in or about October 2014, Freeplay unilaterally altered its confusing and  
4 contradictory "terms and conditions" of use – prohibiting the free use of its music  
5 on YouTube MCNs. On information and belief, following this sudden change,  
6 Freeplay began issuing monetary demands to numerous consumers who had  
7 uploaded media on YouTube through an MCN – media that allegedly contained  
8 music subject to Freeplay's copyright.

9 6. Moreover, following October 2014, Freeplay began issuing  
10 aggressive demands to numerous operators of YouTube MCNs – entities that had  
11 never subscribed to Freeplay's service, downloaded Freeplay's music, or  
12 otherwise agreed to any of Freeplay's terms and conditions.

13 7. CDS seeks a declaratory judgment of non-infringement of alleged  
14 copyright(s) asserted against CDS by Freeplay. CDS further seeks a judgment  
15 against Freeplay for its violation of the California Unfair Competition Law, in that  
16 Freeplay's business practices constitute unfair competition under California law.

### 17 **THE PARTIES**

18 8. CDS is a limited liability company organized and existing under the  
19 laws of the State of California with its principal place of business located in  
20 Beverly Hills, California.

21 9. Upon information and belief, Freeplay is a limited liability company  
22 organized under the laws of the State of Delaware with its principal place of  
23 business located in New York, New York.

24 10. Defendant DOES 1 through 50, inclusive, are sued herein under  
25 fictitious names. When their true names and capacities are ascertained, CDS will  
26 amend this complaint by inserting their true names and capacities herein.

27 11. On information and belief at all times material herein each of the  
28 defendants was the agent and employee of some or all of the other defendants, and

1 in so doing the things hereinafter alleged, was acting within the course and scope  
2 of such agency and employment.

3 **JURISDICTION AND VENUE**

4 12. This action is brought, and this Court has subject matter jurisdiction,  
5 pursuant to 28 U.S.C. Sections 1331, 1338, and 2201. This Court has federal  
6 question jurisdiction in this matter in that Plaintiff seeks a declaration of rights  
7 under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*

8 13. Additionally, this Court has supplemental jurisdiction over this action  
9 pursuant to 28 U.S.C. Section 1367 and California Business and Professions Code  
10 Section 17200 *et seq.*, specifically California Business and Professions Code  
11 Section 17203, which provides any person who engages, has engaged, or proposes  
12 to engage in unfair competition may be enjoined in any court of competent  
13 jurisdiction; and the court may make such orders or judgments, including the  
14 appointment of a receiver, as may be necessary to prevent the use or employment  
15 by any person of any practice which constitutes unfair competition, or as may be  
16 necessary to restore to any person in interest any money or property, real or  
17 personal, which may have been acquired by means of such unfair competition;  
18 and California Business and Professions Code Section 17204, which provides for  
19 actions for any relief pursuant to the Unfair Competition Law to be prosecuted  
20 exclusively in a court of competent jurisdiction by any person who has suffered  
21 injury in fact and has lost money or property as a result of such unfair  
22 competition.

23 14. Venue lies within this Court pursuant to 28 U.S.C. Sections  
24 1391(b)(2)-(3) in that Defendant is subject to the personal jurisdiction of this  
25 Court in this Judicial District. Specifically, Defendant has substantial, continuous  
26 and systematic contacts with California in that Defendant directly targets business  
27 activities towards consumers in California and causes harm to Plaintiff's business

1 within this District through at least the operation of Defendant's fully interactive  
2 Internet website.

3 **FIRST CAUSE OF ACTION**

4 **(For Declaratory Judgment – Non-Infringement of Copyright)**

5 15. Plaintiff re-alleges herein by this reference each and every allegation  
6 contained in paragraphs 1 through 14, inclusive, of this Complaint as if set forth  
7 fully herein.

8 16. Plaintiff is informed and believes that Defendant claims that it owns  
9 and has standing to pursue claims for infringement of certain copyrights, and that  
10 Plaintiff has infringed such copyrights by using copyrighted material without  
11 Defendant's permission.

12 17. Plaintiff firmly denies that it infringed upon any copyright allegedly  
13 belonging to Defendant.

14 18. There is an actual and justiciable controversy between Plaintiff and  
15 Defendant in that Defendant claims that Plaintiff has infringed upon Defendant's  
16 copyrights. Conversely, Plaintiff denies Defendant's claims and contends that it  
17 has not infringed upon Defendant's copyrights.

18 19. A judicial declaration of the parties' respective rights and obligations  
19 with respect to the copyrights allegedly belonging to Defendant.

20 20. Plaintiff is entitled to a declaratory judgment that it is not infringing,  
21 has not infringed, and is not liable for infringing any valid copyright owned by  
22 Defendant, either directly, or by inducing others to infringe, or by contributing to  
23 the infringement of others.

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## SECOND CAUSE OF ACTION

**(For Violation of Unfair Competition Law [California Business & Professions Code § 17200, *et seq.*] Against All Defendants)**

21. Plaintiff re-alleges herein by this reference each and every allegation contained in paragraphs 1 through 20, inclusive, of this Complaint as if set forth fully herein.

22. Plaintiff is informed and believes, and based thereon alleges that Defendant has committed and is continuing to commit unfair, unlawful, and fraudulent business practices and acts constituting unfair competition against Plaintiff as defined by California Business and Professions Code Section 17200, by, among other things, exploiting deceptive business practices through the operation and marketing of its highly interactive website.

23. Plaintiff is informed and believes, and based thereon alleges that, as a direct, proximate, and foreseeable result of Defendant's conduct, as alleged above, Plaintiff has been deprived of money, property, profits, and other benefits that rightfully belong to Plaintiff including, without limitation, the advertising and branding proceeds Plaintiff would otherwise have received from the channels on its MCN, but for the conduct of Defendant. Accordingly, Plaintiff is entitled to restitution of all such money, property, profits, and other benefits.

24. Plaintiff is informed and believes, and based thereon alleges, Defendant's unfair and unlawful acts as described above are a serious and continuing threat to Plaintiff's reputation, goodwill, and financial health. If Defendant is allowed to continue its wrongful acts, Plaintiff will suffer further immediate and irreparable injury, loss, and damage. Plaintiff is further informed and believes, and based thereon alleges that, in the absence of a preliminary and permanent injunction as prayed for below Defendant and its agents, will continue to violate Plaintiff's rights by engaging in the conduct alleged above.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in its favor against Defendant as follows:

## **On the First Cause of Action:**

1. A declaration that Plaintiff is not infringing, has not infringed, and is not liable for infringing any valid copyright owned by Defendant, either directly, or by inducing others to infringe, or by contributing to the infringement of others;
2. For costs of suit incurred herein;
3. For such other and further relief as the Court may deem just and proper; and
4. For attorneys' fees as may be provided by statute;

## On the Second Cause of Action:

1. For restitution of all money, property, profits, and other benefits acquired by Defendant by means of its unfair business practices;
2. For a preliminary and permanent injunction enjoining Defendant, and its officers, agents, servants, employees, assigns, representatives, and all those acting in concert or participating with them, from engaging in, committing, or performing, directly or indirectly, unfair competition as defined in California Business and Professions Code Section 17200 *et seq.*, including, but not limited to, the acts and practices alleged in this Complaint;
3. For costs of suit incurred herein; and
4. For such other and further relief as the Court may deem just and proper.

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1 Dated: February 9, 2015

FREEDMAN + TAITELMAN, LLP

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3 By: /s/ Bryan J. Freedman  
4 Bryan J. Freedman  
5 Sean M. Hardy,  
6 Attorneys for Plaintiff  
7 Collective Digital Studio, LLC  
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